

Formal Complaint to the Washington State Public Disclosure Commission Relating to an Elected Official or Candidate for Public Office

Public Disclosure Commission

Name of Official or Candidate:
Address of Official or Candidate: 210 Lottie / City Ital
Official's or Candidate's Bellingham WA 78735 City State Zip Code
Official's or Candidate's Telephone:(Include Area Code)
Official's or Candidate's E-Mail Address:(If known)
Your signature: Jim Potton
Your printed name: Tim Paxton
Street address: 2120 EUS F.
City, state and zip code: Belling ham, WA 98225
Telephone number: 360-67-64-17
E-Mail Address: (Optional) 1 m-paxton @ yahao. com Date Signed: 3/6/08
Place Signed (City and County): Bellinghom, Whatcom

Complaint: (Attach Complaint and Certification)



Public Disclosure Commission

Certification for a

Complaint to the Washington State Public Disclosure Commission Relating to an Elected Official or Candidate for Public Office (Notary Not Required)

I certify (or declare) under penalty of perjury under the laws of the State of Washington that the facts set forth in this attached complaint are true and correct.

Your signature: The Rotton
Your printed name: Tim Paxton
Street address: 2120 Ellis
City, state and zip code: Bellingham WA 18735
Telephone number: 360 - 671-0417
E-Mail Address: (Optional) Tim - Paxton @ Jaha, com
Date Signed: March (2008
Place Signed (City and County): Bellingham, Whatcom
City County

*RCW 9A.72.040 provides that: "(1) A person is guilty of false swearing if he makes a false statement, which he knows to be false, under an oath required or authorized by law. (2) False swearing is a misdemeanor."

COMPLAINT ATTACHED

February 28, 2008

RECEIVED

MAR - 5 2008

Public Disclosure Commission

Mr. Phil Stutzman
Director of Compliance
Public Disclosure Commission
711 Capitol Way #206
Olympia, Washington 98504-0908

Dear Mr. Stutzman:

My review of Bellingham Mayor Daniel V. Pike's E-mail correspondence received from a public disclosure request submitted to the Skagit County Council of Governments have revealed what appear to be violations of RCW 42,17.130, which states, "No elective official nor any employee of his/her office nor any person appointed to or employed by any public office or agency may use or authorize the use of any of the facilities of a pubic office or agency, directly or indirectly, for the purpose of assisting a campaign for election of any person to any office or for the promotion or opposition to any ballot proposition. Facilities of a public office or agency include, but are not limited to, use of stationary, postage, machines, and equipment, use of employees of the office or agency during working hours, vehicles, office space, publications of the office or agency and clientele lists of persons served by the office or agency.

This prohibition does not apply to activities that are part of the normal and regular conduct of the office or agency.

WAC 390-05-273 defines normal and regular conduct to mean conduct which is (1) lawful, i.e. specifically authorized, either expressly or by necessary implication, in an appropriate enactment, and (2) usual, i.e. not effected or authorized in or by some extraordinary means or manner.

Skagit Council of Governments (SCOG) is a voluntary organization of local governments whose purpose is to foster a cooperative effort in resolving problems, policies and plans that are common and regional. SCOG serves as the lead agency for the Regional Transportation Planning Organization (RTPO) as enabled by Washington State law, and the Skagit Metropolitan Planning Organization (SMPO) as enabled by federal law. As such, SCOG employees fall under the jurisdiction of the state and local employee Hatch Act. RTPO is a state designation. MPO is a federal designation. SCOG also received Federal Community Development Block Grant (CDBG) funds to capitalize their economic development loan fund and other activities.

WAC 292-110-010 tells us in (6) Prohibited Uses: the state Constitution, state and federal laws and the Ethics in Public Service Act strictly prohibit certain

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private activity and certain uses of state resources. Any use of state resources to support such activity clearly undermines public confidence in state government and reflects negatively on state employees in generally. This rule explicitly prohibits at all times the following private use of state resources.

- (a) Any use for the purpose of conducting an outside business or outside employment.
- (b) Any use for the purpose of supporting, promoting the interests of, or soliciting for an outside organization or group, including, but not limited to: a private business, a non-profit organization, or a political party (unless provided by law or authorized by an agency head or designee).
- (c) Any use for the purpose of assisting a campaign for election of a person to office or for the promotion of or opposition to a ballot proposition. Such a use of state resources is specifically prohibited by RCW 42.52.180, subject to the exceptions in RCW 42.52.180(2).
- (d) Any use for the purpose of participating in or assisting in an effort to lobby the state legislature or a state agency head. Such a use of state resources is specifically prohibited by RCW 42.17.190(3).
- (e) Any use related to conduct that is prohibited by a federal or state law or rule, or a state agency policy; and,
- (f) Any private use of any state property that has been removed from state facilities or other official duty stations, even if there is no cost to the state.

I respectfully submit the enclosed documentation to support my complaint of alleged violations by Daniel V. Pike during his campaign for Mayor of Bellingham. It appears that many e-mail were deleted. Mr. Pike averaged less than one e-mail per day, when the national average is thirteen e-mail per day per employee. My research was made more difficult by the SCOG attorney, who heavily redacted campaign related e-mail.

Sincerely,

Enc. List of alleged violations



Public Disclosure

List of Alleged Violations as demonstrated through Mr. Pike's SCOG e-mail account.

- 1. On Monday, February 26, 2007 at 8:26 am, Dan Pike e-mailed copies of "Pike for Mayor" graphics from his SCOG e-mail account to dan@pikeformayor.com, his campaign e-mail address. Subject: Document 1. Attachments Doc1.docx. Pike for Mayor graphics. Alleged violation of RCW 42.17.130.
- 2. On Monday, February 26, 2007, at 8:27 am, Dan Pike e-mailed copies of "Pike for Mayor" graphics with "paid for by the committee" from his SCOG e-mail account to his dan@pikeformayor.com e-mail account. Subject: paid for by the Committee. Attachments: paid for by the Committee.doc. Alleged violation of RCW 42.17.130.
- 3. On Tuesday, February 20, 2007 at 2:21 pm, Dan Pike forwarded an e-mail received from Ed Delaney from his SCOG e-mail account to his dan@Pikeformayor.com account. Subject: FW: campaign. Alleged violation of RCW 42.17.130.
- 4. On Saturday, April 21, 2007, at 8:31 pm, Dan Pike e-mailed a request for Girl Scout troop leader financial aide from his personal e-mail account, pikeboynton@toast.net to his SCOG account. The SCOG attorney redacted information, but a flash light will reveal the source e-mail address. This may have been a personal business item, but it is impossible to know for certain, with the attorney redactions.
- 5. On Tuesday, April 24, 2007, at 4:53 pm, Dan Pike forwarded a copy of the Northern Neighbors Forum Questions from his SCOG e-mail account to his dan@pikeformayor.com e-mail account. The subject is Northern Neighbors Forum Questions. Attachments Northern Neighbors Forum Questions.doc. Alleged violation of RCW 42.17.130.
- 6. On Wednesday, April 25, 2007 at 10:28 am, Dan Pike received a campaign related e-mail from Jim Campbell offering to conduct a fundraiser. Subject: Fundraising (from Beth). Beth offered to hold a garage sale to raise funds. Alleged violation of RCW 42.17.130.
- 7. On Sunday, May 6, 2007, at 9:54 pm, Dan Pike received an e-mail from Keri Shepard requesting assistance with her resume. It's not clear if this is campaign related or perhaps part of Mr. Pike's personal business, Test SOS. Mr. Pike and Ms. Boynton have a small business called BESTTEST in which Mr. Pike offers test preparation assistance for students. Please see attached business license. Subject: Resume redo help. Alleged violation of WAC 292-110-010.

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- 8. On Friday, May 18, 2007, Dan Pike received a copy of an e-mail sent by a WWU employee, Preston Schiller advising Marian Beddill and Dan Pike that he does not want to receive campaign related e-mail at his WWU e-mail account. Subject: Re: (I like Pike) announcements list. Alleged violation of RCW 42.17.130 and perhaps RCW 42.17.180.
- 9. On Friday, May 25, 2007 at 4: 42 pm, Dan Pike forwarded from his SCOG email account a copy of the UPWP 2008 draft of the Unified Planning Work Program (UPWP) MPO and RTPO documents for transportation programs and activities to his dan@pikeformayor.com account. This document is work product for projects that are funded by federal and state grants. Alleged violation of RCW 42.17.130.
- 10. On Tuesday, June 5, 2007, at 9:10 am, Dan Pike sent an e-mail from his SCOG e-mail account to Jim Campbell (Beth) regarding bumper stickers. Subject: Bumper Stickers. This is a campaign-related purchase of campaign bumper stickers that is being donated by Beth. Alleged violation of RCW 42.17.130.
- 11. On Friday, June 15, 2007 at 1:59 pm, Dan Pike forwarded office expenses from his SCOG e-mail account to his dan@pikeformayor.com account. Subject: Emailing: Office expenses-0407. Attachments: Dan Time sheet4-2007.xls, dan timesheet 5.2007.xls, James Timesheet 04-2007.xls, Kelley Timesheet 04-2007.xls, Mark Timesheet 4-2007.xls, Office Expenses -0407.xls. These are confidential files why are payroll records and office expenses being forwarded to a campaign e-mail account? Alleged violation of RCW 42.17.130.
- 12. On Thursday, August 2, 2007, at 11:24 am, Dan Pike e-mailed additional time sheets to his <a href="mailed-emailed-mailed-emailed-additional-em
- 13. On Thursday, August 2, 2007, at 11:23 am, Dan Pike e-mailed Kelley's timesheets from his SCOG e-mail account to his dan@pikeformayor.com account. Again, I question the legality of sending employee timesheets to a campaign account that is monitored by campaign volunteers. Alleged violation of WAC 292-110-010 and RCW 42.17.130.
- 14. On Thursday, August 2, 2007, at 11:25 am, Dan Pike e-mailed Office expenses from his SCOG account to his dan@pikeformayor.com e-mail account. Subject: Office Expenses-0607.xls. Attachments: Office Expenses-0607xls. Alleged violation of WAC 292-110-010 and RCW 42.17.130.
- 15. On Thursday, August 2, 2007, at 11:24 am, Dan Pike e-mailed Mark Sullivan's timesheet for 7-2007 from his SCOG e-mail account to his

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dan@pikeformayor.com account. Subject: Mark Timesheet 7-2007.xls
Attachment: Mark Timesheet 7-2007. Time sheet is attached. It is for MPO/RTPO hours. (Paid with state and federal grant funds). Alleged violation of WAC 292-110-010 and RCW 42.17.130.

16. On Wednesday, August 22, 2007, at 1:18 pm, Dan Pike entered into a five e-mail discussion with Bobbi Krebs-McMullen regarding McShane for Mayor Campaign update. All of the content is campaign related. In the Thursday, July 19, 2007 at 11:09 am e-mail, Dan Pike tells Bobbi Krebs-McMullen that he has put in a good word on her behalf with Kelley, should he leave this post. Alleged violation of RCW 42.17.130.

In addition, offering a job to reward campaign support is illegal under federal law and perhaps also under state law. US Code Title 18 Crimes and Criminal Procedure – Chapter 29 – Elections and Political Activities; reads: "Whoever, directly or indirectly, promises any employment, position, compensation, contract, appointment, or other benefit, provided or made possible in whole or in part by any Act of Congress, or any special consideration in obtaining any such benefit, to any person as consideration, favor, or reward for any political activity or for the support of or opposition to any candidate or any political party in connection with any general or special election to any political office, or in connection with any primary election or political convention or caucus held to select candidates for any political office, shall be fined under this title or imprisoned not more than one year, or both." Bobbi Krebs McMullen was providing campaign information to Mr. Pike about Mr. McShane, his opponent.

- 17. On Thursday, July 26, 2007, at 10:44 am, Dan Pike received an e-mail from Barbara Ryan, Bellingham City Councilor on his SCOG e-mail account regarding Single Family Issues Sehome et all. The Subject is single family issues Sehome et all. Attachments: Conoboy email chain.doc.htm This message was sent to all Bellingham Candidates and is campaign related. Alleged violation of RCW 42.17.130.
- 18. On Wednesday, August 22, 2007, at 11:30 am, Dan Pike received an e-mail from Erin Malone, Bellingham Unitarian Fellowship congratulating him on strong showings in his race. Alleged violation of RCW 42.17.130.
- 19. On Tuesday, November 13, 2007, Dan Pike received an e-mail from Preston Schiller, a WWU employee discussing a transition strategy and potential deputy mayor for Mr. Pike, once the election is ratified by the Whatcom County Auditor (The election was not certified by the Auditor until later in the month). This was one of a dozen or more e-mail on this subject that appeared to be sent back and forth between Schiller and Pike. The election was not certified until November 27, 2007. Alleged violation of RCW 42.17.130.

Public Disclosure Commission

- 20. On Wednesday, November 14, 2007, at 11:31 am, Dan Pike e-mailed copies of the 2008 MPO/RTPO draft budget from his SCOG e-mail account to his dan@pikeformayor.com e-mail account. Alleged violation of RCW 42.17.130.
- 21. On Monday, December 31, 2007 at 3:31 pm, Jon Ammons, treasurer@pikeformayor.com wrote the PDC and requested that all further campaign related correspondence be sent to Dan Pike at his City of Bellingham Mayor's e-mail dpike@cob.org. Alleged violation of RCW 42.17.130.
- 22. A collection of personal e-mail received by Mr. Pike indicating that he used his SCOG computer for personal banking and investing.

Mr. Pike began using the SCOG office and equipment for campaign related activities in February of 2007 and the activity continued through November 30, of 2007. The Public Disclosure request produced 256 total incoming and outgoing e-mail for the calendar year of 2007.

In addition, Mr. Pike sent numerous SCOG related work products to his campaign e-mail at campaign headquarters.

WAC 292-110-010 tells us in (6) Prohibited Uses: the state Constitution, state and federal laws and the Ethics in Public Service Act strictly prohibit certain private activity and certain uses of state resources. Any use of state resources to support such activity clearly undermines public confidence in state government and reflects negatively on state employees in generally. This rule explicitly prohibits at all times the following private use of state resources. Many of the documents sent to dan@pikeformayor.com are work product funded through MPO and RTPO grant funds. Other documents are confidential payroll records of SCOG employees and Contractors. Prohibited political activity includes the use of public facilities and equipment for campaign purposes.

In closing, please accept the enclosed documents as a complaint against Dan Pike.

I respectfully request that you immediately investigate this complaint and levy fines and penalties, as appropriate under law.

Tim Paxton 2120 Ellis Street Bellingham, WA 98225 (360) 671-0417 ATTORNEY GENERAL
OF WASHINGTON

MAR 0 5 2008
GOVERNMENT COMPLIANCE
& ENFORCEMENT

March 3, 2008

Mr. Rob McKenna Washington State Attorney General 1125 Washington St SE PO Box 40100 Olympia, WA 98504-0100

Dear Mr. McKenna:

I regret that I must request that the State of Washington bring a civil action against Daniel V. Pike, former Transportation Director of Skagit Council of Government for the misuse of a public facility and SCOG work products. Please accept this as a 45 day Citizen's Action letter. I respectfully submit this request based on RCW 42.17.400 and the special remedies provided in RCW 42.17.390. If the prosecuting attorney does not bring a civil action within 45 days, I reserve the right to commence a citizen's action within 10 days upon your failure to do so.

RCW 42.17.400(4) states, in part: "Any person who has notified the attorney general and the prosecuting attorney in the county in which the violation occurred in writing that there is reason to believe that some provision of this chapter is being or has been violated may himself bring in the name of the state any of the actions (hereinafter referred to a citizen's action) authorized under this chapter.

I understand that this citizen action may be brought only if the attorney general and the prosecuting attorney have failed to commence an action hereunder within forty-five days after such notice and such person has thereafter further notified the attorney general. Please note I will commence a citizen's action within 10 days upon their failure to do so.

A lay person review of Mr. Pike's recent campaign related activities was made more difficult by his employer's refusal to provide materials requested under the Washington State Public Disclosure Act. Specifically, a request for his internet surfing record was denied by SCOG attorney. This was after Mr. Tom Ford of the Attorney General's Office was kind enough to generate a detailed opinion letter for SCOG's attorney confirming that they should release the requested information, immediately and at no charge. SCOG refused to release the easily obtained record.

Second, a PDA request sent to SCOG for all of Mr. Pike's emails sent/received showed that he apparently only sent 256 emails in a one year period (Nov 2006 - Nov 2007).

That is a rate of less than one per day. This request took weeks to fulfill. Many gaps in email threads are clearly missing. An average office worker produces some 13 emails per day. At that rate, 3300 emails sent and only 256 produced show a likely effort to redact and possibly delete incriminating or personal or campaign related emails has taken place.

Daniel V. Pike has allegedly violated RCW 42.17.130 and other pertinent RCW and WACs. There are three Public Disclosure Commission complaints (08-089, 08-102 and 08-109) filed with the Washington State Public Disclosure Commission that deal specifically with this campaign. All three complaints are being investigated by the PDC. I have included copies of the complaints for your review.

I have recently submitted a fourth complaint to the PDC that demonstrates that Mr. Pike routinely used his SCOG e-mail account to send and receive campaign-related messages and campaign-related business beginning in February of 2007 through November of 2007.

Mr. Pike also routinely used his SCOG e-mail account to conduct personal business such as banking, printing resumes, checking on his Ameritrade accounts and other personal correspondence, which I believe may be an alleged violation of WAC 292-110-010.

WAC 292-110-010 tells us in (6) Prohibited Uses: the state constitution, state and federal laws and the Ethics in Public Service Act strictly prohibit certain private activity and certain uses of state resources. Any use of state resources to support such activity clearly undermines public confidence in state government and reflects negatively on state employees generally. This rule explicitly prohibits at all times the following private use of state resources.

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- (b) Any use for the purpose of supporting, promoting the interests of, or soliciting for an outside organization or group, including, but not limited to: a private business, a non-profit organization or a political party (unless provided by law or authorized by an agency head or designee).
- (c) Any use for the purpose of assisting a campaign for election of a person to office or for the promotion of or opposition to a ballot proposition. Such a use of state resources is specifically prohibited by RCW 42.17.180(2)...
- (e) Any use related to conduct that is prohibited by a federal or state law or rule, or a state agency policy; and,
- (f) Any private use of any state property that has been removed from state facilities or other official duty stations, even if there is no cost to the state.

Skagit Council of Governments (SCOG) is a voluntary organization of local governments whose purpose is to foster a cooperative effort in resolving problems, policies, and plans that are common and regional. SCOG serves as the lead agency for the Regional Transportation Organization (RTPO) as enabled by Washington State law, and the

Skagit Metropolitan Planning Organization (MPO) as enabled by federal law. As such, SCOG employees fall under the jurisdiction of the state and local employee Hatch Act.

In addition to campaign related messages, Mr. Pike was also sending SCOG work-products to his dan@pikeformayor.com e-mail account which was monitored by campaign volunteers in Bellingham. The material sent to this account included payroll reports for all SCOG employees and certain SCOG consultants, budget documents, SCOG MPO/RTPO documents and other work-related material that may or may not be considered confidential. Please note that Mr. Pike did have a private personal e-mail account that he could have used to send work related material to himself.

Of concern also is an e-mail dated July 19, 2007, sent to Bobbi Krebs-McMullen, a former Skagit County Planning Commissioner, regarding a McShane for Mayor Campaign Update, from Mr. Pike's SCOG e-mail account, using his official SCOG title, allegedly putting in "a word on your behalf with Kelley, should I leave this post." This message was sent after Ms. Krebs-McMullen sent Mr. Pike detailed campaign information about his opponent, Dan McShane.

Offering a job to reward campaign support is illegal under federal law and perhaps under state law. U.S. Code Title 18, Crimes and Criminal Procedure, Chapter 29, Elections and Political Activities – reads: "Whoever, directly or indirectly, promises any employment, position, compensation, contract, appointment, or other benefit, provided or made possible in whole or in part by any Act of Congress, or any special consideration in obtaining any such benefit to any person as consideration, favor, or reward for any political activity or for the support of or opposition of any candidate or any political party in connection with any primary election or political convention or caucus held to select candidates for any political office, shall be fined under this title or imprisoned for not more than one year, or both."

It is my understanding that Mr. Pike may allegedly be in violation of the state and local federal Hatch Act. (Title 5 of the United States Code, Sections 1501-1508, and Title 5 of the Code of Federal Regulations part 151). SCOG receives federal funding for MPO/RTPO programs and activities, U.S. Economic Development Administration (EDA) program funds and Federal Community Block Grant Funds (CDBG). 1502 tells us that state and local officer or employee may not (1) use his official authority or influence for the purpose of interfering with or affecting the result of an election or nomination for office. (3) Be a candidate for elective office.

The state and local Hatch Act provisions prohibit certain public employees from participating in "partisan" campaigns. I understand that the Mayor of Bellingham race is "nonpartisan," but the Hatch Act standard clearly states that nonpartisan can transform to partisan election when:

• Employee/Candidate seeks and receives endorsement of political party. (Mr. Pike

received the endorsement of the Democratic Party on June 13, 2007).

- Employee/Candidate advertises endorsement of political party. (Mr. Pike advertised the Democratic Party's endorsement on campaign literature, newspaper ads, television ads, and on "you tube"). You Tube can be found at: http://www.youtube.com/watch?v=iY-wjIQ-VIA
- Employee/Candidate uses political party resources. (Mr. Pike had access to lists and other party resources during his campaign after the endorsement).
- Employee/Candidate announces he is political party candidate.

I have just filed a Complaint of Possible Prohibited Political Activity (Violation of the Hatch Act) with the U.S. Office of Special Counsel in Washington D.C. and individual complaints with federal and state agencies for the alleged misuse of a publicly funded local agency facility to conduct prohibited campaign activity.

CFR 24 Sec. 570.207 Ineligible activities for agencies that receive Federal Community Block (CDBG) funds states: The General Rule is that any activity that is not authorized under the provisions of Sec. 570.201 through 570.206 is ineligible to be assisted with CDBG funds. This section identifies specific activities that are ineligible and provides guidance in determining the eligibility of other activities frequently associated with housing and community development.

- (a) The following activities may not be assisted with CDBG funds:
- (3) Political activities. CDBG funds shall not be used to finance the use of facilities or equipment for political purposes or to engage in other partisan political activities, such as candidate forums, voter transportation, or voter registration." As stated earlier, similar prohibitions exist for the use of U.S. Economic Administration program funds and MPO federal funds. The state of Washington also has prohibitions based on the federal law regarding the use of RTPO funds.

I'm also filing a 45 day Citizen Action letter with the Skagit County Prosecutor's Office as is required under RCW 42.17.400(4).

I urge you, to explore all remedies available, including the possibility of having a court voiding the election or declaring Mr. Pike ineligible for office.

RCW 42.17.390: Civil remedies and sanctions, which is in the RCW section dealing with Public Disclosure in campaigns, says:

If the court finds that the violation of any provision of this chapter by any candidate or political committee probably affected the outcome of any election, the result of said election may be held void and a special election held within sixty days of such finding. Any action to void an election shall be commenced within one year of the date of the

election in question. *It is intended that this remedy be imposed freely in all appropriate* cases to protect the right of the electorate to an informed and knowledgeable vote.

As you may know, most voters were kept unaware of Mr. Pike's likely use of government offices and taxpayer funded equipment and salary to work on his campaign. His hidden campaign contributions from developers reportedly exceeding 50% of his declared expenditures and his possible ineligibility to even run after obtaining partisan support under Hatch Act restrctions makes it likely Mr. Pike's actions denied Bellingham voters the ability to make an informed and educated decision on how to vote in this recent election.

Please do not hesitate to contact me if you have additional questions.

Sincerely,

Tim Paxton

2120 Ellis Bellvigham, NA 98235 360-67/-04/7